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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/706,797	11/12/2003	Thomas W. Droog	DROOG ET AL -1 PCT	8045
	7590	12/27/2005	DIV	
Collard & Roe, P.C. 1077 Northern Boulevard Roslyn, NY 11576			EXAMINER HUYNH, LOUIS K	
			ART UNIT	PAPER NUMBER
			3721	

DATE MAILED: 12/27/2005

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/706,797
Filing Date: November 12, 2003
Appellant(s): DROOG ET AL.

MAILED

DEC 27 2005

Group 3700

Allison C. Collard
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 08/10/2005 appealing from the Office action mailed 10/13/2004.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

(A) Claims 48-51 and 58-60 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the instant specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The instant specification and drawings do not disclose and/or teach:

- Grasping the opposed top edges of the bag with a pair of grabber arms (claim 48);
- Pulling the grasped top edges of the bag apart (claim 48);
- Providing a pair of finger assemblies and moving the finger assemblies up, over, and down over the top edges of the bag (claims 48);
- Moving the bag toward the sealing apparatus while the finger assemblies are moving away from each other (claims 50 & 60);
- Moving the finger assemblies away from each other to close the opening of the bag (claims 49 & 59);
- Pulling the grasped edges of the bag apart while delivering the bag to a sealing apparatus (claim 51);
- Grasping the opposed top edges of the bag with a pair of finger assemblies that move inwardly and down to grasp the top edges of the bag (claim 58).

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(B) Claims 48-51 and 58-60 are rejected under 35 U.S.C. 102(a) as being clearly anticipated by Gates et al. (US 6,550,226).

Because claims 48-51 and 58-60 contains subject matter which was not supported by the instant specification and the originally filed specification of the parent Application No.

09/890,083, they form new matter and thus are not entitled to the benefit of earlier filing date of either the parent Application No. 09/890,083 or PCT/CA00/00114 or Canada 2,262,276.

Claims 48-51 and 58-60 are exact copies of claims 20-23 and 30-32 of U.S. Patent No. 6,550,226 to Gates et al.; they are, therefore, clearly anticipated by U.S. Patent No. 6,550,226 to Gates et al., which has an effective filing date of October 27, 1999 and a publication date of April 22, 2003.

(10) Response to Argument

Appellants' arguments in the brief has been carefully considered and are not found persuasive for the following reasons:

- With respect to claim 48, the specification at page 11, lines 14-31 and Figure 7(h) teach that only the inner fingers 67 of the inner arms 66 are capable of moving outwardly from each other to meet the respective outer fingers 62 to clampingly engage a bag 46, but the specification does not disclose or support "*grasping the opposed top edges of the bag with a pair of grabber arms*" as recited in claim 48 because the fingers 67 are not the arms even though they are connected; therefore, the bag is not grasped by the pair of gripper arms, the step of pulling the grasped top edges is thus not supported. Furthermore, the specification does not disclose or support a step of "*...moving the finger assemblies up, over and down over the*

top edges of the bag” included in the step (f) of delivering the bag to a sealing apparatus. The delivering step only includes moving the finger assemblies laterally according to the specification at page 14, lines 3-5, which states: “*The gripper assembly 50 then retracts laterally, as seen in Figure 7(i), and transfers the bag 46 longitudinally to the conveyor station 54.*” Appellants’ gripper assembly being capable of moving in three axis does not justify for the motion of the fingers in transferring the bag to the sealing apparatus as claimed in step (f) of claim 48. The Board is respectfully directed to the last paragraph on page 11 of the Brief, in which appellants have admitted that the gripper assembly 50 moving upward into position for the next bag is performed after the bag has been delivered to the sealing apparatus. Thus the specification and the drawings do not support the claimed steps of “*...moving the fingers assemblies up, over, and down over the top edges of the bag*” in delivering the bag to a sealing apparatus as claimed in claim 48.

- With respect to claim 51, the specification does not have support for the bag 46 being grasped and pulled by the gripper arms 62 and 66 while the delivering step (f) is conducted as claimed in claim 51 because the gripper assembly 50 of the present application, according to the specification at page 14, lines 3-5, does not move up or down in delivering the bag to the sealing apparatus.
- With respect to claims 49 and 50, the specification does not disclose or support the step of “*moving finger assemblies away from each other*” because the finger

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assemblies are fixedly mounted to the gripper assembly 50 according to the specification on page 11, lines 14-31.

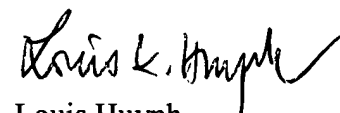
- With respect to claim 58, the specification does not disclose or support *"a pair of finger assemblies that move inwardly and down to grasp the top edges of the bag"* recited in claim 58 because the specification at page 11, lines 14-31, teaches that the fingers assemblies are fixedly mounted to the gripper assembly 50 and that only the inner fingers 67 move outwardly from each other to meet the respective outer fingers 62 to clampingly engage a bag 46.
- With respect to claims 59 and 60, the specification does not disclose or support the step of *"moving finger assemblies away from each other"* because the finger assemblies are fixedly mounted to the gripper assembly 50 according to the specification on page 11, lines 14-31.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

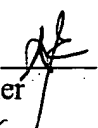
For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,



Louis Huynh
Primary Examiner
AU-3721

Conferees

Stephen Gerrity 
Primary Examiner

John Sipos 
Senior Primary Examiner/Acting SPE